



House of Representatives

General Assembly

File No. 212

February Session, 2000

Substitute House Bill No. 5590

House of Representatives, March 23, 2000

The Committee on General Law reported through REP. FOX of the 144th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning Consumer Protection For New Home Construction.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1 of public act 99-246 is repealed and the
2 following is substituted in lieu thereof:

3 As used in [this act] public act 99-246:

4 (1) "Certificate" means a certificate of registration issued under
5 section 3 of [this act] public act 99-246;

6 (2) "Commissioner" means the Commissioner of Consumer
7 Protection or any person designated by the commissioner to
8 administer and enforce [this act] public act 99-246;

9 (3) "Contract" means any agreement between a new home
10 construction contractor and a consumer for the construction or sale of a
11 new home;

12 (4) "New home construction contractor" means any person who
13 contracts with a consumer to construct or sell a new home or any
14 portion of a new home prior to occupancy;

15 (5) "New home" means any newly constructed (A) single family
16 dwelling unit, [any] (B) dwelling consisting of not more than two
17 units, or (C) a unit, common element or limited common element in a
18 condominium, as defined in section 47-68a of the general statutes, or in
19 a common interest community, as defined in section 47-202 of the
20 general statutes;

21 (6) "Person" means one or more individuals, partnerships,
22 associations, corporations, limited liability companies, business trusts,
23 legal representatives or any organized group of persons; [and]

24 (7) "Consumer" means the [original] buyer or prospective buyer, or
25 the [original] buyer's or prospective buyer's heirs or designated
26 representatives, of any new home; and

27 (8) "Completion" means the stage of construction of a new home in
28 which the new home construction contractor is in receipt of such new
29 home's certificate of occupancy issued by the municipality in which
30 such new home is constructed.

31 Sec. 2. (NEW) Public act 99-246, as amended by this act, does not
32 apply to any of the following persons or organizations: (1) Any person
33 holding a current license as a real estate broker or salesperson issued
34 pursuant to chapter 392 of the general statutes, provided such person
35 engages only in work for which such person is licensed under chapter
36 392 of the general statutes; (2) any other person holding a professional
37 or occupational license, registration or certificate issued pursuant to
38 the general statutes, provided such person engages only in the work
39 for which such person is licensed; and (3) any new home construction
40 contractor who enters into one or more new home construction
41 contracts related to the same new home when such contract or

42 contracts in the aggregate with respect to that home has a total price
43 for work or services that is less than three thousand five hundred
44 dollars.

45 Sec. 3. Section 2 of public act 99-246 is repealed and the following is
46 substituted in lieu thereof:

47 (a) No person shall engage in the business of new home
48 construction or hold oneself out as a new home construction contractor
49 unless such person has been issued a certificate of registration by the
50 commissioner in accordance with the provisions of [this act] public act
51 99-246, as amended by this act. No new home construction contractor
52 shall be relieved of responsibility for the conduct and acts of its agents,
53 employees or officers by reason of such new home construction
54 contractor's compliance with the provisions of [this act] public act 99-
55 246, as amended by this act.

56 (b) Any person seeking a certificate of registration shall apply to the
57 commissioner, in writing, on a form provided by the commissioner.
58 The application shall include the applicant's name, [residence or]
59 business street address, business telephone number, [and] the identity
60 of the insurer that provides the applicant with insurance coverage for
61 liability [based upon the errors and omissions of the new home
62 construction contractor] and workers' compensation, and, if such
63 applicant is required by any provision of the general statutes to have
64 an agent for service of process, the name and address of such agent.
65 Each such application shall be accompanied by a fee of one hundred
66 twenty dollars, except that no such application fee shall be required if
67 such person has paid the registration fee required under section 20-421
68 of the general statutes, as amended, during any year in which such
69 person's registration as a new home construction contractor would be
70 valid.

71 (c) Certificates issued to new home construction contractors shall
72 not be transferable or assignable.

73 (d) All certificates issued under the provisions of [this act] public act
74 99-246, as amended by this act, shall expire biennially. The fee for
75 renewal of a certificate shall be the same as the fee charged for an
76 original application, except as provided in subsection (c) of section 9 of
77 [this act] public act 99-246, and that no renewal fee is due if a person
78 seeking renewal of a certificate has paid the registration fee under
79 section 20-427 of the general statutes during any year in which such
80 person's registration as a new home construction contractor would be
81 valid.

82 (e) A certificate shall not be restored unless it is renewed not later
83 than one year after its expiration.

84 (f) Failure to receive a notice of expiration or a renewal application
85 shall not exempt a contractor from the obligation to renew.

86 Sec. 4. Section 4 of public act 99-246 is repealed and the following is
87 substituted in lieu thereof:

88 (a) A new home construction contractor shall (1) prior to entering
89 into a contract with a consumer for new home construction, provide to
90 the consumer a copy of the new home construction contractor's
91 certificate of registration and a written notice that (A) discloses that the
92 certificate of registration does not represent in any manner that such
93 contractor's registration constitutes an endorsement of the quality of
94 such person's work or of such contractor's competency by the
95 commissioner, (B) advises the consumer to contact the Department of
96 Consumer Protection to determine (i) if such contractor is registered in
97 this state as a new home construction contractor, (ii) if any complaints
98 have been filed against such contractor, and (iii) the disposition of any
99 such complaints, and (C) advises the consumer to request from such
100 contractor a list of [each individual or the fifteen most recent
101 individuals, whichever is less for whom such contractor has engaged
102 in new home construction during the current and preceding calendar
103 year] consumers of the last twelve new homes constructed to

104 completion by the contractor during the previous twenty-four months,
105 or if the contractor has not constructed at least twelve new homes to
106 completion during the previous twenty-four months, then a list of all
107 consumers for whom the contractor has constructed a new home to
108 completion during the previous twenty-four months, and to contact
109 several individuals on the list to discuss the quality of such contractor's
110 new home construction work, (2) state in any advertisement, including
111 any advertisement in a telephone directory, the fact that such
112 contractor is registered, and (3) include such contractor's registration
113 number in any such advertisement.

114 (b) A new home construction contractor shall include in every
115 contract with a consumer a provision advising the consumer that the
116 consumer may be contacted by such contractor's prospective
117 consumers concerning the quality and timeliness of such contractor's
118 new home construction work, unless the consumer advises such
119 contractor, in writing, at the time the contract is executed, that the
120 consumer prefers not to be contacted.

121 (c) The written notice required in subsection (a) of this section shall
122 be in capital letters not less than ten-point bold face type, and may
123 include a statement in substantially the following form:

124 "NEW HOME CONSTRUCTION CONTRACTOR

125 REGISTRATION NOTICE

126 A CERTIFICATE OF REGISTRATION AS A NEW HOME
127 CONSTRUCTION CONTRACTOR DOES NOT REPRESENT IN ANY
128 MANNER THAT THE CONNECTICUT DEPARTMENT OF
129 CONSUMER PROTECTION ENDORSES THE QUALITY OF THE
130 CONTRACTOR'S NEW HOME CONSTRUCTION WORK OR THE
131 CONTRACTOR'S COMPETENCY TO ENGAGE IN NEW HOME
132 CONSTRUCTION.

133 ACCORDINGLY, YOU ARE ADVISED TO:

134 (1) REQUEST FROM THE CONTRACTOR A LIST OF [EACH
135 INDIVIDUAL OR THE FIFTEEN MOST RECENT INDIVIDUALS,
136 WHICHEVER IS LESS, FOR WHOM THE CONTRACTOR HAS
137 ENGAGED IN NEW HOME CONSTRUCTION IN THIS STATE
138 DURING THE CURRENT AND PRECEDING CALENDAR YEAR]
139 CONSUMERS OF THE LAST TWELVE NEW HOMES
140 CONSTRUCTED TO COMPLETION BY THE CONTRACTOR
141 DURING THE PREVIOUS TWENTY-FOUR MONTHS, OR IF THE
142 CONTRACTOR HAS NOT CONSTRUCTED AT LEAST TWELVE
143 NEW HOMES TO COMPLETION DURING THE PREVIOUS
144 TWENTY-FOUR MONTHS, THEN A LIST OF ALL CONSUMERS
145 FOR WHOM THE CONTRACTOR HAS CONSTRUCTED A NEW
146 HOME TO COMPLETION DURING THE PREVIOUS TWENTY-
147 FOUR MONTHS,

148 (2) CONTACT SEVERAL INDIVIDUALS ON THE LIST TO
149 DISCUSS THE QUALITY AND THE TIMELINESS OF THE
150 CONTRACTOR'S NEW HOME CONSTRUCTION WORK, AND

151 (3) CONTACT THE DEPARTMENT OF CONSUMER
152 PROTECTION TO VERIFY THE REGISTRATION INFORMATION
153 PRESENTED BY THE CONTRACTOR AND TO ASCERTAIN THE
154 CONTRACTOR'S COMPLAINT HISTORY WITH THE
155 DEPARTMENT.

156 IN ADDITION, YOU ARE ADVISED TO DISCUSS WITH THE
157 NEW HOME CONSTRUCTION CONTRACTOR:

158 (1) WHETHER THE CONTRACTOR HAS A CUSTOMER SERVICE
159 POLICY AND IF SO, THE IDENTITY OF THE PERSON
160 DESIGNATED TO ASSIST YOU IN RESOLVING ANY COMPLAINT
161 ABOUT THE CONTRACTOR'S WORK, AND

162 (2) WHETHER THE CONTRACTOR WILL HOLD YOU
163 HARMLESS FOR WORK PERFORMED BY ANY SUBCONTRACTOR
164 HIRED BY THE CONTRACTOR.

165 THIS NOTICE DOES NOT CONTAIN AN EXHAUSTIVE LIST OF
166 THE INQUIRIES YOU SHOULD MAKE BEFORE CONTRACTING
167 WITH A NEW HOME CONSTRUCTION CONTRACTOR.
168 ADDITIONAL INFORMATION TO ASSIST YOU IN YOUR
169 SELECTION OF A NEW HOME CONSTRUCTION CONTRACTOR
170 MAY BE OBTAINED BY CONTACTING THE CONNECTICUT
171 DEPARTMENT OF CONSUMER PROTECTION."

172 (d) No person shall: (1) Present, or attempt to present as such
173 person's own, the certificate of another; (2) knowingly give false
174 evidence of a material nature to the commissioner for the purpose of
175 procuring a certificate; (3) represent such person falsely as, or
176 impersonate, a registered new home construction contractor; (4) use or
177 attempt to use a certificate which has expired or which has been
178 suspended or revoked; (5) engage in the business of a new home
179 construction contractor or hold oneself out as a new home construction
180 contractor without having a current certificate of registration under
181 [this act] public act 99-246, as amended by this act; (6) represent in any
182 manner that such person's registration constitutes an endorsement of
183 the quality of such person's work or of such person's competency by
184 the commissioner; or (7) fail to refund a deposit paid to a new home
185 construction contractor not later than ten days after a written request
186 mailed or delivered to the new home construction contractor's last
187 known address, if (A) the consumer has complied with the terms of the
188 written contract up to the time of the request, (B) no substantial
189 portion of the contracted work has been performed at the time of the
190 request, (C) more than thirty days has elapsed since the starting date
191 specified in the written contract or more than thirty days has elapsed
192 since the date of the contract if such contract does not specify a starting
193 date, and (D) the new home construction contractor has failed to

194 provide a reasonable explanation to the consumer concerning such
195 contractor's failure to perform a substantial portion of the contracted
196 work. For purposes of this subdivision, "substantial portion of the
197 contracted work" includes, but is not limited to, work performed by
198 the new home construction contractor to (i) secure permits and
199 approvals, (ii) redraft plans or obtain engineer, architect, surveyor or
200 other approvals for changes requested by the consumer or made
201 necessary by site conditions discovered after the contract is executed,
202 (iii) scheduling site work or arranging for other contractors to perform
203 services related to the construction of the consumer's new home, and
204 (iv) any other work referred to in the contract as a "substantial portion
205 of the contracted work."

206 Sec. 5. This act shall take effect from its passage.

GL Committee Vote: Yea 15 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Future Revenue Loss

Affected Agencies: Department of Consumer Protection

Municipal Impact: None

Explanation**State Impact:**

The bill exempts those individuals who are dually registered as new home construction contractors and home improvement contractors from the biennial registration renewal fee of \$60 for new home construction contractors. Department of Consumer Protection records indicate that approximately half of the current 1600 new home construction contractors are also registered as home improvement contractors. Thus, a future revenue loss of \$48,000 (\$60 X 800) is anticipated. This exemption will not impact the fees required to be paid to the Home Construction Guaranty Fund.

The bill exempts anyone holding a professional or occupational license, registration or certificate from the requirement that they obtain a new home construction license if the individual is going to work within the scope of his current license on new home construction. (This definition does not exempt those registered as home improvement contractors from obtaining a new home construction contractor registration if the individual is going to engage in new home

construction work, because such work is outside the scope of the home improvement registration.) To the extent an individual is currently licensed for another occupation, and will not seek a new home construction license, a minimal, future potential revenue loss may result. However, in practice few, if any, individuals currently licensed for another occupation have sought a new home construction license, thus there is no current fiscal impact. Additionally, the bill exempts contractors with contracts valued at less than \$3,500 for a particular home from the requirement that the individual register as a new home construction contractor. It is anticipated that few, if any, contractors engage exclusively in new home construction contracts valued at less than \$3,500, thus no current fiscal impact is anticipated.

OLR Bill Analysis

sHB 5590

AN ACT CONCERNING CONSUMER PROTECTION FOR NEW HOME CONSTRUCTION.**SUMMARY:**

This bill makes anyone with a contract to sell a new home register as a new home contractor, but it exempts anyone with a state-issued license, registration, or certificate working within the scope of his or her license (see COMMENT). It also exempts contractors with contracts valued at less than \$3,500 for a particular home.

The bill also (1) revises the requirement for contractors to provide consumers with a list of references; (2) defines when a new home is completed; and (3) requires registration applicants to (a) show they have worker's compensation insurance and (b) state the name and address of any agent for service of process required by law.

Finally, it requires registration applicants to provide their business street address rather than provide either their business or home address.

EFFECTIVE DATE: October 1, 2000

LIST OF REFERENCES

The law requires new home contractors to give consumers a notice that, in part, advises them to ask for a list of the 15 most recent individuals for whom the contractor has engaged in home construction. The bill, instead, requires this part of the notice to advise consumers to request a list of the last 12 new homes built to completion by the contractor during the previous 24 months, or, if the contractor has not completed 12 new homes during this period, a list of all consumers for whom he has built a new home to completion during the previous 24 months. The bill defines "completion" as the

construction stage in which the contractor has obtained a municipal certificate of occupancy.

The effect of this change is to (1) reduce the number of references the consumer is advised to request from 15 to 12, (2) advise the consumer to request a list of homes rather than individuals for whom the contractor worked, (3) exclude from the list homes that are not completed by the contractor, and (4) make the requirement inapplicable to subcontractors who work on a new home but do not build it to completion.

EXEMPTIONS

The bill exempts (1) licensed real estate brokers and salespeople from the new home construction contractor law if the real estate licensee has not provided any services or work toward the construction of the new home; (2) licensed, registered, or certified professionals or tradesmen if they are working within the scope of their license; and (3) any new home construction contractor who enters into contracts that have an aggregate value of less than \$3,500 with respect to a single home.

BACKGROUND

Related Bill

SB 367, reported favorably by the General Law Committee, also exempts tradesmen and professionals working within the scope of their state-issued license from the new home contractor registration law.

COMMENT

Exemption for Professionals and Tradesmen

The clause exempting certain professionals and tradesmen from the new home contractor law is unclear. It may apply to anyone holding a state-issued license, registration, or certificate working within the scope of their credential or it may only exempt professionals and tradesmen holding a license.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 0